

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 THOMAS WILLIAM SINCLAIR
8 RICHEY,

9 Plaintiff,

10 v.

11 D. DAHNE,

12 Defendant.

CASE NO. C12-5060 BHS

ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION AND
GRANTING PLAINTIFF'S
REQUEST TO WITHDRAW HIS
MOTION TO DISMISS

13 This matter comes before the Court on the Report and Recommendation ("R&R")
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 9) and
15 Thomas William Sinclair Richey's ("Richey") objections to the R&R and his request to
16 withdraw his previously filed motion to withdraw (Dkt. 10). The Court will refer to
17 Richey's motion to withdraw as a "motion to dismiss." The Court has considered the
18 R&R and Richey's objections and request to withdraw his earlier motion, as well as the
19 remaining record, and hereby declines to adopt the R&R and grants Richey's request to
20 withdraw his motion to dismiss for the reasons stated herein.

21 On February 26, 2012, Richey filed a complaint against D. Dahne. Dkt. 4. A few
22 days later, on February 29, 2012, Richey filed a motion to voluntarily dismiss his lawsuit

1 without prejudice and sought a waiver or return of his filing fee. Dkt. 8. On March 27,
2 2012, Magistrate Judge Karen L. Strombom issued an R&R (Dkt. 9). In it, Judge
3 Strombom ruled in part that, pursuant to Rule 41(a)(1)(i), Richey's voluntary dismissal
4 was granted.

5 Richey's reason for filing his motion to dismiss was based on two prior rulings he
6 received from Magistrate Judge Strombom involving the filing of grievances. In the two
7 prior R&Rs, Judge Strombom had ruled that Richey's claims were procedurally barred
8 for failure to exhaust administrative remedies and issued a strike against him in each
9 case. C11-5755-BHS/KLS and C11-5680-RBL/KLS. On March 26, 2012, Judge Ronald
10 B. Leighton adopted Magistrate Judge Strombom's report and recommendations in case
11 C11-5680-RBL/KLS. To avoid another adverse ruling and a third strike in a case also
12 involving the filing of a grievance, Richey moved to voluntarily dismiss the instant suit
13 because he assumed that Magistrate Judge Strombom would again rule against him. Dkt.
14 10 at 1-5.

15 However, on March 28, 2012, after Richey filed the motion to dismiss his case,
16 this Court issued an order declining to adopt Magistrate Judge Strombom's R&R in case
17 C11-5775-BHS/KLS. C11-5755-BHS/KLS, Dkt. 22 at 2 and 3. In ruling on the R&R,
18 this Court found, in relevant part, that Richey's (1) "grievance was 'withdrawn' instead
19 of denied, which makes his grievance not subject to appeal, and (2) the subsequent
20 grievance was typed, not handwritten, and only contains the grievance manager's
21 signature." *Id.* at 2. Thus, the Court determined that failure to exhaust administrative
22

1 remedies was not a proper basis on which to dismiss Richey's case, and declined to adopt
2 Judge Strombom's R&R. *Id.*.

3 Once this Court issued the aforementioned ruling, it appears that Richey's
4 understanding of the law and his concern with facing a third strike changed. Richey now
5 wishes to proceed with his case against D. Dahne. Therefore, he filed the instant motion
6 objecting to Judge Strombom's R&R granting his voluntary withdrawal and requesting
7 that this Court withdraw his prior motion to dismiss his case.

8 This Court finds that Richey's request to withdraw his motion to dismiss should be
9 granted.

10 Therefore, it is hereby **ORDERED** that

- 11 (1) The Court declines to adopt the R&R (Dkt. 9); and
12 (2) Richey's request to withdraw his motion to dismiss his
13 complaint (Dkt. 10) is **GRANTED**; and
14 (3) This matter is re-referred to Magistrate Judge Strombom for further
15 proceedings.

16 Dated this 31st day of May, 2012.

17
18 

19 BENJAMIN H. SETTLE
20 United States District Judge
21
22